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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 411 (RA)

5 ZISHE ABRAHAM,

6 Plea

7 Defendant.

-----x

8 New York, N.Y.
9 October 10, 2023
10 2:00 p.m.

11 Before:

12 HON. RONNIE ABRAMS,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 JILAN KAMAL

Assistant United States Attorney

18 ILANA HARAMATI

19 Attorney for Defendant

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MS. KAMAL: Good afternoon, your Honor. Jilan Kamal on behalf of the United States.

THE COURT: Good afternoon.

MS. HARAMATI: Good afternoon, your Honor. Ilana Haramati on behalf of Zishe Abraham, who is standing to my right as well.

THE COURT: Good afternoon to both of you.

So I understand, Mr. Abraham, that you intend to plead guilty to the charge in the superseding information; is that correct?

THE DEFENDANT: Yes.

THE COURT: First of all, I'm going to have my deputy swear you in.

(Defendant sworn)

THE COURT: So first of all, have you received a copy of this superseding information?

THE DEFENDANT: Yes.

THE COURT: And have you reviewed it?

THE DEFENDANT: Yes.

THE COURT: Have you discussed it with your attorney?

THE DEFENDANT: Yes.

THE COURT: So the first thing I want to talk about is

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1 just the fact that you are proceeding by way of information
2 instead of an indictment. Under our legal system, before you
3 can be charged with a felony offense, the government must go to
4 a grand jury, which must decide whether there's probable cause
5 to believe that a crime was committed and that you committed
6 it, and that can result in what's called an indictment. But
7 you have to understand that by agreeing to proceed by way of
8 information instead of indictment, you are giving up your right
9 to make the government go and get that indictment from a grand
10 jury.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: And I understand that you signed a waiver
14 of indictment form; is that correct?

15 THE DEFENDANT: Yes.

16 THE COURT: When you signed this form and, today, as
17 you are waiving indictment, I just want to make sure you
18 understand that you are the agreeing to give up your right to
19 make the government charge you by way of indictment.

20 THE DEFENDANT: Yes.

21 THE COURT: And were any threats or promises made to
22 get you to waive indictment, other than what's in the plea
23 agreement?

24 THE DEFENDANT: No.

25 THE COURT: And I just want to confirm, counsel, do

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1 you agree that Mr. Abraham has knowingly and voluntarily waived
2 his right to be charged by a grand jury?

3 MS. HARAMATI: Yes, I do, your Honor.

4 THE COURT: So I authorize the filing of the
5 superseding information.

6 Now, I understand that you intend to plead guilty to
7 Count One of the information, which charges you with conspiring
8 to commit wire fraud. Before deciding whether to accept your
9 plea, I'm going to ask you certain questions so that I can be
10 sure that you understand your rights and that you are pleading
11 voluntarily and because you are guilty and not for some other
12 reason. It's important that you answer my questions honestly
13 and completely. So if at any time you are having trouble
14 understanding any of the questions, feel free to let me know or
15 you can just speak to your attorney.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: You should also know that, since you are
19 under oath, if you answer any of my questions falsely, you
20 could be charged with a separate crime of perjury.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: So first, I'm going to start by asking you
24 questions to ensure that you are competent to plead guilty.
25 These are questions that I ask of everyone in your situation.

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1 How old are you?

2 THE DEFENDANT: 33.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: It's high school.

5 THE COURT: Did you finish high school?

6 THE DEFENDANT: Yes.

7 THE COURT: Are you currently or have you recently
8 been understood the care of a medical professional, a
9 psychiatrist or a mental healthcare provider?

10 THE DEFENDANT: No.

11 THE COURT: Have you ever been hospitalized for mental
12 illness, alcoholism or drug addiction?

13 THE DEFENDANT: No.

14 THE COURT: In the past 24 hours, have you taken any
15 drugs, medicine or pills or drunk any alcoholic beverages?

16 THE DEFENDANT: No.

17 THE COURT: Is your mind clear today?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand what's happening in
20 these proceedings?

21 THE DEFENDANT: Yes.

22 THE COURT: Does either counsel have any doubt as to
23 Mr. Abraham's competence to plead guilty at this time?

24 MS. KAMAL: No, your Honor.

25 MS. HARAMATI: None, your Honor.

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1 THE COURT: On the basis of Mr. Abraham's responses to
2 my questions and my observations of his demeanor here in court
3 and representations of counsel, I find that he's fully
4 competent to enter an informed plea of guilty at this time.

5 Mr. Abraham, have you had enough time and opportunity
6 to discuss your case with your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you discussed with her the nature of
9 the charge to which you intend to plead guilty and any possible
10 defenses you may have to that charge?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you also discussed with her the
13 rights that you will be giving up and consequences of pleading
14 guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you satisfied with her representation
17 of you?

18 THE DEFENDANT: Yes.

19 THE COURT: So now I'm going to explain certain
20 constitutional rights that you have to you, these are rights
21 you will be giving up if you enter a guilty plea.

22 So first, under the Constitution and laws of the
23 United States, you have a right to plead not guilty to the
24 charge in the superseding information.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: If you did plead not guilty, you would be
3 entitled under the Constitution to a speedy and public trial by
4 jury of those charges.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: In advance of trial, if you went to trial,
8 you would have the opportunity to seek suppression of any or
9 all of the evidence against you on the basis that it was
10 obtained in violation of the Constitution.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: At trial, again, if you chose to go to
14 trial, you would be presumed innocent, that means that you
15 would not have to prove that you were innocent. Instead, the
16 government would need to prove your guilt beyond a reasonable
17 doubt before you could be found guilty. So even if you did
18 nothing or said nothing at trial, you could not be convicted
19 unless a jury of 12 people agreed unanimously that you are
20 guilty.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: At trial, again, if you chose to go to
24 trial, the witnesses for the prosecution would have to come to
25 court and testify in your presence where you could see them and

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1 hear them and your lawyer could cross-examine them.

2 If you wanted to, your lawyer could offer evidence on
3 your behalf. You would be able to use the Court's power to
4 compel witnesses to come to court, to testify truthfully in
5 your defense, even if they didn't want to come.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: At trial, again, if you went to trial, you
9 would also have the right to testify, if you wanted to. But
10 you would also have the right not to testify. And if you chose
11 not to testify, that could not be used against you in any way,
12 no inference or suggestion of guilt could be made from the fact
13 that you chose not to testify.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: At trial and at every stage of your case,
17 you would be entitled to be represented by an attorney. If you
18 could not afford an attorney, one would be appointed at public
19 expense, meaning free of cost, to represent you.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If you were convicted, if you went to
23 trial and you were convicted, you would have a right to appeal
24 that verdict to a higher court.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: As I said before, you have a right to
3 plead not guilty, even as you sit here right now, for purposes
4 of entering a guilty plea. You have a right to change your
5 mind and to go to trial. But if you do plead guilty and I
6 accept your guilty plea, there will be no trial and you'll be
7 giving up the rights that I just described.

8 Do you understander that?

9 THE DEFENDANT: Yes.

10 THE COURT: If you plead guilty, all that will remain
11 to be done is for me, for the Court, to impose sentence. I'll
12 enter a judgment of guilty and I will sentence you on that
13 basis, after considering whatever submissions I get from your
14 lawyer and the government, as well as a presentence report
15 prepared by the probation department, but there will be no
16 appeal with respect to whether the government could use the
17 evidence it has against you or with respect to whether you did
18 or did not commit a crime.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: You also understand that if you do plead
22 guilty, that you'll be giving up your right not to incriminate
23 yourself because I'm going to ask you certain questions today
24 in order to assure myself that you are in fact guilty as
25 charged.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Count One of the superseding indictment
4 charges you with conspiracy to commit wire fraud in violation
5 of Title 18, United States Code, Section 371.

6 Could the government please state the elements of the
7 offense in question.

8 MS. KAMAL: Yes, your Honor.

9 The first element is that two or more individuals
10 agreed to engage in a scheme to defraud that involved the use
11 of interstate wires;

12 Second, that the defendant entered into that agreement
13 knowing its intent to defraud; and

14 Third, that at some point during the conspiracy,
15 during the charged period, at least one member performed an
16 overt act in furtherance of the agreement's objective.

17 The objective, wire fraud has elements of its own:

18 The first is that there was a scheme or artifice to
19 defraud or to obtain money or property by materially false and
20 fraudulent pretenses, representations or promises;

21 Second, that the defendant knowingly participated in
22 the scheme or artifice to defraud with knowledge of its
23 fraudulent nature and with specific intent to defraud; and

24 Third, in executing that scheme, the defendant used or
25 caused the use of interstate wires.

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1 THE COURT: Thank you.

2 Mr. Abraham, if you were to go to trial, the
3 government would need to prove all of that to a jury before you
4 could be convicted.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, I'm going to discuss the maximum
8 penalties. The maximum means the most that could possibly be
9 imposed. It doesn't necessarily mean it's the sentence you
10 will receive. But you have to understand that by pleading
11 guilty, you are exposing yourself to the possibility of
12 receiving any combination of punishments up to the maximums I'm
13 about to describe.

14 With respect to your liberty, the maximum term of
15 imprisonment for this crime is five years in prison.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Any term of imprisonment may be followed
19 by a term of supervised release of up to three years.
20 Supervised release means that if you are sentenced to prison,
21 when you are released from prison, you will be subject to the
22 supervision by the probation department. It's kind of like
23 probation, if you don't go to prison. But if you do go to
24 prison and are on supervised release afterwards, you will be
25 required to follow certain rules and if you violate those

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1 rules, you can be returned to prison without a jury trial to
2 serve additional time, even beyond your original sentence.

3 Do you understand all of that?

4 THE DEFENDANT: Yes.

5 THE COURT: You should also understand that there's no
6 parole in the federal system. So if you are sentenced to
7 prison, you will not be released early on parole, although
8 there is a limited opportunity to earn credit for good
9 behavior.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: In addition to these restrictions on your
13 liberty, the punishment for this crime includes certain
14 financial penalties. The maximum allowable fine is \$250,000,
15 twice the gross pecuniary gain derived from the offense or
16 twice the gross pecuniary loss to persons other than yourself
17 resulting from the offense.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: I'm also required to impose a mandatory
21 special assessment of \$100.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: In addition, I must order restitution to
25 any persons or entities injured as a result of your criminl

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1 conduct and I can order you to forfeit all property derived
2 from the offense or used to facilitate the offense.

3 Do you understand that those are the maximum penalties
4 for this offense?

5 THE DEFENDANT: Yes.

6 THE COURT: Is Mr. Abraham being prosecuted or, as far
7 as you know, investigated elsewhere?

8 MS. KAMAL: No, your Honor.

9 THE COURT: You should be aware that the punishments I
10 just described are those that may be part of a sentence, but
11 being convicted of a felony may have other consequences.

12 Are you a United States citizen?

13 THE DEFENDANT: Yes.

14 THE COURT: Then you should understand that, as a
15 result of your guilty plea, you may lose certain valuable civil
16 rights, to the extent that you have them now, such as the right
17 to vote, the right to hold public office, the right to serve on
18 a jury and the right to possess any kind of firearm.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, in imposing sentence, federal judges
22 are required to consider recommendations of the federal
23 sentencing guidelines. The guidelines are a complicated set of
24 rules for determining an appropriate sentence. Although judges
25 must take into account the sentencing guidelines in determining

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1 a sentence, in the end, the judge is required to give the
2 sentence she believes best satisfies the purpose of the
3 criminal law, as set forth in a provision of the law, it's 18,
4 United States Code, Section 3553(a), even if that's higher or
5 lower than the guidelines recommendation.

6 Have you discussed the sentencing guidelines with your
7 attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that they're only
10 recommendations to the Court?

11 THE DEFENDANT: Yes.

12 THE COURT: Now, I understand that you have entered
13 into a written plea agreement with the government; is that
14 correct?

15 THE DEFENDANT: Yes.

16 THE COURT: So I have what appears to be an original
17 agreement. It's dated September 19th. And I'm marking it as
18 Court Exhibit 1. And I'm just going to ask my deputy to show
19 it to you.

20 Is that the plea agreement that you entered into with
21 the government?

22 THE DEFENDANT: Yes.

23 THE COURT: And before signing this, did you read it?

24 THE DEFENDANT: Yes.

25 THE COURT: And did you discuss it with your attorney?

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1 THE DEFENDANT: Yes.

2 THE COURT: I realize that it's a somewhat lengthy
3 document, it contains some technical legal language, but after
4 discussing it with your attorney, do you understand all of the
5 terms of the agreement?

6 THE DEFENDANT: Yes.

7 THE COURT: I'm going to ask the government to
8 summarize the primary terms of the agreement, please.

9 MS. KAMAL: Yes. The primary terms of the agreement
10 require the defendant to waive -- well, first, that the
11 defendant stipulates to a guideline calculation that is set
12 forth at page 2 and 3 of the agreement. I would note here that
13 the guideline calculation is also -- the agreement provides
14 that, in light of a pending amendment to the sentencing
15 guidelines, if the defendant is determined to qualify under
16 that amendment for a further reduction in the offense level,
17 the plea agreement provides for him to receive the benefit of
18 that offense level reduction. The plea agreement requires that
19 the defendant waive any right to appeal a sentence that is
20 within the stipulated guidelines range. It also requires that
21 the defendant stipulate to a fine range that is set forth in
22 the agreement, which is also on page 3. I believe those are
23 the material terms for the purposes of the plea proceeding,
24 your Honor.

25 THE COURT: So I'm just going to go over one or two of

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1 those.

2 The range that you have agreed to with the government,
3 the stipulated guidelines range, is 37 to 46 months in prison.
4 That means that neither you nor the government can argue for a
5 different guidelines calculation, with the exception of the one
6 particular provision that the prosecutor just mentioned, but
7 you can still seek a sentence outside that range.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: But you should understand that this
11 agreement doesn't bind me in any way. I'm going to do my own
12 independent calculation of the guidelines and then determine
13 what an appropriate sentence is. I'm not saying I will come up
14 with a range, but even if I do, that wouldn't be a basis for
15 you to withdraw your plea.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you also understand that you are giving
19 up your right to appeal or otherwise challenge your sentence so
20 long as I sentence you within or below that stipulated
21 guidelines range?

22 So if I sentence you to more than 46 months in prison,
23 you have the right to appeal or otherwise challenge your
24 sentence. But if I sentence you to 46 months or less, you
25 can't appeal or otherwise challenge your sentence under this

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1 agreement.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And you are also giving up other rights in
5 this agreement, including to challenge your conviction or
6 sentence on the ground that the government has failed to
7 produce any discovery material or Jencks Act or Brady material
8 that it hasn't produced as of signing this agreement.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you willingly sign this plea
12 agreement?

13 THE DEFENDANT: Yes.

14 THE COURT: Has anyone threatened, bribed or forced
15 you to sign the plea agreement or to plead guilty?

16 THE DEFENDANT: No.

17 THE COURT: Other than what's in the plea agreement,
18 has anyone offered you any inducement to plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone made any promises to you as to
21 what your sentence will be?

22 THE DEFENDANT: No.

23 THE COURT: I just ask that because I want to make
24 sure you understand that, even if someone attempted to predict
25 what your sentence would be, that that prediction could be

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1 wrong. No one knows what your sentence will be today. I don't
2 know, the prosecutor doesn't know, your lawyer doesn't know.
3 That's not going to be determined until I receive a presentence
4 report from the probation department, I consider the arguments
5 of all the lawyers, I calculate the guidelines, and then at
6 that point decide what an appropriate sentence would be. So I
7 just want to make sure that you understand that, even if your
8 sentence is different from what you had hoped for or expected,
9 that that's not a basis to withdraw your plea.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: I also see you have signed a consent
13 preliminary order of forfeiture, it's to specific
14 property/money judgment.

15 Did you sign this document?

16 THE DEFENDANT: Yes.

17 THE COURT: Among other things, in this agreement, you
18 have agreed to forfeit a sum of money equal to \$967,696 in
19 United States currency representing proceeds traceable to the
20 commission of the offense and all right, title and interest in
21 the following specific property, and then it lists specific
22 property; \$650,119.71 in a JPMC bank number, \$22,442.50 also on
23 deposit at that bank, and \$150,000.91 on deposit also at the
24 same bank.

25 Did you knowingly and willingly sign this consent

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1 preliminary order of forfeiture and agree to forfeit the
2 property noted herein?

3 THE DEFENDANT: Yes.

4 THE COURT: So now that you have been advised of the
5 charge against you and the possible penalties that you face and
6 the rights that you are giving up, is it still your intention
7 to plead guilty?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, I'm going to ask you the official
10 question: With respect to Count One of the superseding
11 information, how do you plead?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you plead guilty or not guilty?

14 THE DEFENDANT: Yes, guilty.

15 THE COURT: And do you admit to the forfeiture
16 allegation in the superseding information?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, tell me, just in your own words, what
19 you did that makes you believe that you are guilty of this
20 crime.

21 MS. HARAMATI: Your Honor, Mr. Abraham has prepared
22 something written that he's going to read.

23 THE COURT: That's fine.

24 THE DEFENDANT: During the time charged in the
25 information --

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1 THE COURT: I'm sorry, if you can speak very loudly
2 and clearly and slowly, please. It can be difficult to hear
3 with the high ceilings in the courtroom. Thank you.

4 THE DEFENDANT: During the time charged in the
5 information, I agreed with others to participate in a scheme to
6 defraud Amazon by shipping materials in different quantities
7 and for different prices than what Amazon has ordered. I did
8 this in order to receive money from Amazon that I knew I was
9 not legitimately entitled to. I understand that the payment
10 from Amazon came through a bank located within Manhattan.

11 This was wrong. I will never engage in this kind of
12 conduct ever again. I'm sorry for my actions.

13 THE COURT: And when you did this, did you know that
14 what you were doing was wrong and was illegal?

15 THE DEFENDANT: Yes.

16 THE COURT: And tell me, again, when was this?

17 THE DEFENDANT: 2027 and 2019.

18 THE COURT: 2017 and 2019; is that correct?

19 THE DEFENDANT: Yes.

20 THE COURT: Are there additional questions that the
21 government would like me to ask?

22 MS. KAMAL: No. Thank you, your Honor.

23 THE COURT: Can you please summarize what the
24 government's evidence would be if you were to go to trial.

25 MS. KAMAL: Yes.

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1 If the government were to go to trial, the government
2 would offer evidence of communications between this particular
3 defendant -- but all defendants -- regarding their coordination
4 and trading tactics and advice on how best to defraud the
5 victim. The government would also offer records from Amazon
6 reflecting the original amounts, the original products in the
7 original quantities and at the original prices that the company
8 intended to order from the defendants and the records
9 reflecting what items it actually received. The government
10 would also offer other types of documentary evidence, including
11 records of bank transfers that would attest to the amounts that
12 the defendant and his coconspirators received as a result of
13 the scheme.

14 THE COURT: Do both the government and defense counsel
15 agree that there's a sufficient factual predicate for the
16 guilty plea?

17 MS. KAMAL: Yes, your Honor.

18 MS. HARAMATI: Yes, your Honor.

19 THE COURT: Mr. Abraham, because you acknowledge you
20 are in fact guilty as charged in the superseding information
21 and because I'm satisfied that you understand your rights,
22 including your right to go to trial, and that you are aware of
23 the consequences of your plea, including the sentence which may
24 be imposed and because I find that you are knowingly and
25 voluntarily pleading guilty, I accept your plea to Count One of

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1 the superseding information.

2 The probation department will want to interview you in
3 connection with a presentence report that it will prepare.

4 Counsel, would you like to be present at the
5 interview?

6 MS. HARAMATI: Yes, your Honor.

7 THE COURT: Thank you.

8 If you speak to the probation department, just make
9 sure everything you say is truthful and accurate. I will read
10 the presentence report very carefully before imposing sentence,
11 so you should review it. And if there's anything in it that's
12 in error, please raise it with your attorney so she can raise
13 it with me.

14 And then we set a sentencing date for March 21st at
15 11:30 a.m.

16 The government shall provide the probation office with
17 its factual statement within one week. And defense counsel
18 shall arrange for the defendant to be interviewed by the
19 probation department within the next two weeks.

20 I do want to make sure that counsel are familiar with
21 my individual rules and practices in criminal cases. They are
22 on the court website. They contain some rules regarding
23 sentencing submissions. In accordance with those rules,
24 defense submissions are due two weeks prior to sentencing and
25 the government's submission one week prior to sentencing.

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1 Does the government have any objection to continuing
2 the current conditions of bail?

3 MS. KAMAL: No, your Honor.

4 THE COURT: So they will be continued.

5 Mr. Abraham, all the conditions on which you were
6 released up to now will continue until sentence. But any
7 violation of those conditions can have serious consequences,
8 including revocation of your bail and prosecution of you for
9 bail jumping. So you must be in this court at the time of
10 sentencing or, to the extent that it's adjourned, at the time
11 to which it's adjourned. I just want to make sure you
12 understand that.

13 Do you understand that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Are there any applications at this time?

16 MS. KAMAL: Not from the government. Thank you, your
17 Honor.

18 MS. HARAMATI: Nothing from the defense. Thank you,
19 your Honor.

20 THE COURT: Thank you. We are adjourned.

21 (Adjourned)
22
23
24
25